

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Big Stone Gap Division**

**SOUTHERN COAL CORPORATION,  
A&G COAL CORPORATION,**

**Plaintiffs,**

**v.**

**Civil Action No.:** \_\_\_\_\_

**NORFOLK SOUTHERN CORPORATION,  
NORFOLK SOUTHERN RAILWAY COMPANY,**

**Defendants.**

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, defendants Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively “NS”), by counsel, file this Notice of Removal of the civil action styled *Southern Coal Corporation and A&G Coal Corporation v. Norfolk Southern Corporation and Norfolk Southern Railway Company*, Case No. CL11-40 (the “Action”), from the Circuit Court of Wise County, Virginia (the “State Court”) to the United States District Court for the Western District of Virginia, Big Stone Gap Division. In support of this Notice of Removal, Norfolk Southern states as follows:

1. On January 27, 2011, Plaintiffs initiated the Action by filing a Complaint against Norfolk Southern in the State Court.

2. Although process has not yet been formally served on Norfolk Southern’s registered agent, Plaintiffs’ counsel sent to Norfolk Southern on January 27, 2011 a copy of the Complaint, Motion for Temporary Injunction, Memorandum in Support of Motion for Temporary Injunction and the affidavit of James C. Justice, III, copies of which are filed herewith collectively as Exhibit 1.

3. This is a civil action over which this Court has original subject matter jurisdiction under 28 U.S.C. § 1331. Thus, removal is proper from state court to this United States District Court under the provisions of 28 U.S.C. § 1441(b) without regard to the citizenship or residence of the parties. Pursuant to 28 U.S.C. § 1331, this case arises under the Constitution, laws or treaties of the United States in that Plaintiffs' right to relief, if any, under the state court Complaint, requires resolution, construction or application of one or more substantial questions of federal law in dispute between the parties, in particular the Interstate Commerce Act, 49 U.S.C.A. §§ 1, *et seq.*

4. The entire case is removable to federal court, including any potential state law claims, based on the existence of original jurisdiction founded upon 28 U.S.C. § 1331. *See* 28 U.S.C. § 1441(c); *see also* 28 U.S.C. § 1367; *City of Chicago v. International College of Surgeons*, 522 U.S. 156 (1997).

5. This Notice of Removal is being filed with this Court within thirty (30) days of the date on which the case became removable and, therefore, is timely pursuant to 28 U.S.C. § 1446(b). Venue is proper in this Court under 28 U.S.C. § 1441 and Local Rule 2 for the U.S. District Court for the Western District of Virginia, as the Big Stone Gap Division embraces Wise County.

NORFOLK SOUTHERN CORPORATION,  
NORFOLK SOUTHERN RAILWAY COMPANY

By Counsel

Michael W. Smith  
VSB No. 01125  
Craig T. Merritt  
VSB No. 20281  
CHRISTIAN & BARTON, LLP  
909 East Main Street, Suite 1200  
Richmond, Virginia 23219  
Tel.: (804) 697-4100  
Fax: (804) 697-4112

Wade W. Massie  
VSB No. 16616  
Stephen M. Hodges  
VSB No. 01220  
PENN, STUART & ESKRIDGE  
208 East Main Street  
Abingdon, Virginia 24210  
Tel.: (276) 623-4409  
Fax: (276) 628-5621

By /s/ Wade W. Massie  
Wade W. Massie

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 31, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and I further certify that I have faxed and mailed by United States Postal Service the document to:

Elsey A. Harris III, Esq.  
Mullins, Harris & Jessee  
The Law Building  
30 Seventh Street  
P.O. Box 1200  
Norton, Virginia 24273-0912  
Fax: (276) 679-3113

J. Kevin Buster, Esq.  
Benjamin F. Easterlin, Esquire  
KING & SPALDING LLP  
1180 Peachtree Street NE  
Atlanta, Georgia 30309  
Fax: (404) 572-5100

and mailed the document to:

J. Jack Kennedy, Jr., Clerk  
Circuit Court of Wise County  
Post Office Box 1248  
Wise, VA 24293

/s/ Wade W. Massie

Wade W. Massie